

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Emergency Broadband Benefit Program

WC Docket No. 20-445

To: Chief, Wireline Competition Bureau

ATLANTIC BROADBAND FINANCE, LLC PETITION FOR WAIVER

Pursuant to Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, Atlantic Broadband Finance, LLC (“Atlantic Broadband”) hereby requests expedited grant of a waiver of the Commission’s Emergency Broadband Benefit (“EBB”) Program reimbursement rules to the extent necessary to allow USAC to approve ten June 2021 EBB pending claims for reimbursement that Atlantic Broadband timely uploaded to the Universal Service Administrative Company’s (“USAC”) Lifeline Claims System (“LCS”) without any deficiencies but that could not be certified prior to the submission deadline due to an apparent failure of the LCS to enable the company to set the claims as ready for certification. USAC has informally advised Atlantic Broadband that it cannot process these claims, referred to hereinafter as the Affected Claims,¹ without a waiver from the Commission because of the claims deadline set forth in Section 54.1608(g) of the Commission’s rules.² Atlantic Broadband has already credited its participating low-income customers for the BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL

¹ These ten pending claims submitted by July 15, 2021 under the Atlantic Broadband Service Provider Identification Number 200000511 for the June service month include one for each of the following Study Area Codes: 812029, 813032, 815090, 817064, 818052, 819055, 820042, 821042, 824058, and 856027.

² 47 C.F.R. § 54.1608(g).

in EBB reimbursements that it reasonably expected to receive in connection with the Affected Claims, and loss of these funds would inflict a significant undue hardship on the company.

Summary of Facts

The following summary of facts is supported by a sworn declaration of the responsible corporate representative attached hereto.

Under the *EBB Program Order*, reimbursements are based on a “snapshot report of a provider’s enrolled subscribers as of the first of the month.”³ Providers have until the 15th of each month, or the following business day in the event the 15th falls on a weekend or holiday, to submit to USAC their reimbursement claims for the households captured on the snapshot report.⁴ Section 54.1608(g) of the Commission’s rules prescribes that reimbursement claims submitted after that date will not be processed.⁵

Participating providers utilize the LCS to submit EBB claims through three sequential steps: 1) downloading a copy of the EBB claims report (which is based on the National Lifeline Administration Database (“NLAD”) snapshot report), 2) uploading the EBB claim details into LCS, and 3) certifying the EBB claims. USAC publishes instructions on how to complete the EBB claims process on its EBB website and provides page level instructions within LCS for participating providers.⁶

In June, Atlantic Broadband successfully followed these USAC instructions to prepare and certify all of its EBB claims for May service. On July 15 during east coast business hours, it

³ Emergency Broadband Benefit Program, Report and Order, WC Docket No. 20-445, FCC 2129, ¶ 98 (2021) (*EBB Program Order*).

⁴ *EBB Program Order*, ¶ 98.

⁵ *EBB Program Order*, ¶¶ 99-100.

⁶ USAC’s guidance on submission and certification of EBB claims can be found at <https://www.usac.org/about/emergency-broadband-benefit-program/system-resources/ebb-program-claims-proc/> visited on July 23, 2021.

attempted to repeat this process for June service and uploaded the EBB claims template with the required information to LCS. At that time, the claims appeared in “uploaded” status. When Atlantic Broadband attempted to set the claims as “ready to certify” as required, for an unknown reason that appears to have been outside of the company’s control, only the status of one of the eleven June claims moved to “ready to certify” status. Atlantic Broadband timely certified that claim as it had its earlier May claims, which demonstrates that the company representatives understood how to do so correctly. However, despite repeated attempts to set the Affected Claims to ready to certify status, the Affected Claims remained stuck in uploaded status.

Atlantic Broadband then reached out to USAC for assistance in setting the status of the Affected Claims during east coast business hours on the afternoon of July 15. USAC’s EBB service center representative suggested following steps that Atlantic Broadband had already taken, and a further attempt to do so was likewise unsuccessful. The EBB service center representative advised Atlantic Broadband that the fact that the Affected Claims were in “uploaded” status meant there were no upload errors, and then advised Atlantic Broadband to send a request for assistance via email to the EBB help desk, which Atlantic understood to be EBBHelp@usac.org. Atlantic Broadband immediately sent its request for assistance in resolving the issue along with a screenshot of the EBB claims status, and it did not receive a response before the end of the day July 15.

As the day closed, the responsible company representatives presumed that because the problem appeared to be with the LSC itself and compliance with the certification deadline was beyond its control that the deadline would be extended, similar to the Commission’s recent extension of the Form 477 deadline earlier this year. Only after July 15 did the company realize that the problem was not widespread, and it continued to reach out to USAC to seek a solution. Atlantic Broadband communicated several times with USAC between July 16 and 23, but USAC

was not able to present a solution and finally advised Atlantic Broadband to seek a waiver from the Commission.

Application of Standard for Waiver

The Commission is required to “take a ‘hard look’ at meritorious applications for waiver,”⁷ and grant of a waiver is appropriate “if special circumstances warrant deviation from the general rule and such deviation will serve the public interest.”⁸ In considering the waiver request, the Commission must take into account considerations of hardship, equity, and more effective implementation of overall policy on an individual basis.⁹

A waiver is clearly warranted under this standard. Atlantic Broadband undertook and completed all actions within its control that should have been sufficient to timely complete and certify the Affected Claims. Atlantic Broadband then contacted USAC multiple times prior to the claims deadline on July 15 to seek assistance in resolving the apparent failure of the LCS to make it possible for Atlantic Broadband to certify the Affected Claims, to no avail. Atlantic Broadband clearly intended to timely submit and certify the Affected Claims. It uploaded the claims information for the Affected Claims the same way and at the same time it had the other EBB claims that were certified. Had Atlantic not encountered the roadblock described above, or had USAC been able to direct Atlantic Broadband how to navigate around it, the company would have timely certified the Affected Claims.

The company has undertaken substantial efforts and expense to enroll market and participate in the EBB, and the dependability of a user-friendly reimbursement mechanism is essential to sustain the discounted pricing offered to eligible customers. Grant of a waiver is

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*).

⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). The Commission has the authority to waive any provision of its rules for good cause shown. 47 C.F.R. § 1.3.

⁹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

warranted to avoid a miscarriage of justice and to provide assurance to Atlantic Broadband and other service providers that continued participation in the EBB will not expose them to undue risk of economic harm arising from rigid enforcement of the submission deadline even applied to claims that were timely uploaded and only not certified due to challenges in using the LCS and in obtaining timely support.

By contrast, grant of a waiver on these facts would not undermine the EBB Program or the Commission's objectives. According to the *EBB Program Order*, the Commission adopted the 15-day claim deadline so that USAC could "track disbursements and ... provide a projection for the depletion of the Fund that is based on the most accurate and up-to-date household and disbursement information."¹⁰ USAC has not yet published updated EBB disbursement information that would need to be changed based upon the grant of this waiver, and even if it had, the total reimbursement at issue in this waiver request represents less than a trivial 0.1% of all EBB subscribers as of the end of June 2021. Moreover, because the Affected Claims are for the second month of the program, such a minor adjustment early on would not materially affect the projected fund depletion calculations. The Commission previously granted a much more significant waiver in extending the deadline for all providers for their May claims, finding that "this limited waiver will not materially undermine USAC's ability to track disbursements and forecast for the projected final month of the program as the waiver Petitioners are seeking is limited to a one-month delay of reimbursement claims for impacted subscribers."¹¹

¹⁰ *EBB Program Order*, ¶ 100.

¹¹ *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 21-840, ¶ 9 (July 15, 2021).

For the foregoing reasons, the requested waiver is in the public interest and should be granted.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "PBH", is positioned above the printed name and contact information.

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July 27, 2021

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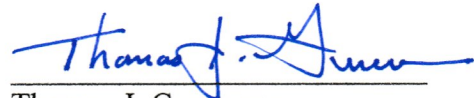
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DECLARATION OF THOMAS J. GUNERMAN

I, Thomas J. Gunerman, hereby declare the following:

1. I am Deputy General Counsel of Atlantic Broadband Finance, LLC and have responsibility for the company's submission of claims for reimbursement from the Federal Communications Commission's Emergency Broadband Benefit Program. My business address is 2 Batterymarch Park, Suite 205, Quincy, Massachusetts 02169.
2. I have personal knowledge of the facts set forth in the foregoing Petition for Waiver and such facts are true and correct to the best of my knowledge, information, and belief.

I hereby represent and warrant that the above declaration is consistent with Section 1.17 of the Commission's rules, 47 C.F.R. § 1.17, which requires truthful and accurate statements to the Commission, and acknowledge that false statements and misrepresentations to the Commission are punishable under Title 18 of the U.S. Code and may subject the filer to enforcement actions.



Thomas J. Gunerman
Deputy General Counsel
Atlantic Broadband Finance, LLC

Executed July 27, 2021